

UNITED STATES OF AMERICA,

CIVIL ACTION NO.

ISLAND CHEMICAL COMPANY,
BERLEX LABORATORIES, INC., and
PHARMACIA & UPJOHN S.P.A.
Defendants.

The United States of America (“United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges:

1. This is a civil action brought pursuant to Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9601, et seq. In this action, the United States seeks to recover costs incurred by the United States to respond to releases or threatened releases of hazardous substances at or from the “Island Chemical Company Superfund Site” (“Site”), located off

Melvin Evans Highway in St. Croix, in the United States Virgin Islands. The United States also seeks injunctive relief requiring the Defendants to implement EPA's Record of Decision dated August 13, 2002.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the release or threatened release of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANTS

4. Defendant Island Chemical Company, ("Island Chemical") is a Delaware corporation that did business in St. Croix, U.S. Virgin Islands at all times relevant to this litigation. Island Chemical is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Berlex Laboratories, Inc. ("Berlex") is a Delaware corporation that did business in St. Croix, U.S. Virgin Islands at all times relevant to this litigation. Berlex is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Pharmacia & Upjohn S.p.A. ("Pharmacia & Upjohn") is an Italian corporation, is the successor-in-interest to Pierrel America, a company that did business in St.

Croix, U.S. Virgin Islands at all times relevant to this litigation. Pharmacia & Upjohn is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

FACTUAL BACKGROUND

7. The Site consists of approximately 3.5 acres located off Melvin Evans Highway in St. Croix, in the U.S. Virgin Islands.

8. The Site was operated as a pharmaceuticals manufacturing facility by a succession of companies from approximately 1968 to the late 1980's.

9. Pharmaceuticals manufacturing that occurred at the Site resulted in the disposal of various substances including xylene, phthalates, chloroform and polynuclear aromatic hydrocarbons as well as metals, among which were numerous hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) into soils, sediment and groundwater at the Site.

10. The Site is a “facility”, as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. The Site was listed on the National Priorities List (“NPL”) 40 C.F.R. Part 300, Appendix B, pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a) June 17, 1996.

12. Sites on the NPL are those that EPA has determined present the greatest danger to public health, welfare, or the environment, and are eligible for long-term remedial action financed with funds from the Hazardous Substance Superfund, commonly referred to as the “Superfund”, 42 U.S.C. § 9611.

13. In October of 1994, in response to a release or a substantial threat of a release of

hazardous substances at or from the Site, Berlex and Pierrel S.p.A. undertook a Remedial Investigation and Feasibility Study ("RI/FS") under an Administrative Order on Consent which they entered into with EPA.

14. Upon information and belief, Pierrel S.p.A. later merged with Pharmacia & Upjohn, with Pharmacia & Upjohn emerging as the surviving entity.

15. The RI/FS disclosed the presence of numerous substances including ethylbenzene, xylene, chloroform, and various metals in soils, sediment and groundwater at the Site.

16. The substances referred to in the preceding paragraph include "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. On August 13, 2002, EPA issued a Record of Decision ("ROD") which selected a remedy for addressing the contamination at the Site. The remedy involves, among other things, air sparging soil vacuum extraction for soils and groundwater in certain areas of the Site.

18. As a result of the releases or threatened releases of hazardous substances at and from the Site, the United States has incurred "response costs," as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a).

19. The United States has incurred unreimbursed response costs, including interest thereon, in excess of \$650,000 in connection with response actions at the Site and is likely to incur further response costs in the future.

20. Defendants have not reimbursed the United States for all of the response costs the United States has incurred for response actions taken at the Site.

21. The response actions taken by the United States, and the resulting response costs incurred by the United States, in connection with the Site are not inconsistent with the National

Contingency Plan as set forth in 40 C.F.R. Part 300.

CLAIM FOR RELIEF

22. Paragraphs 1 through 21 are re-alleged and incorporated herein by reference.
23. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:
1. the owner and operator of a . . . facility,
 2. any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
 3. any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
 4. any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan
24. Island Chemical operated at the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
25. Berlex, based upon its direct involvement in the operations of its subsidiary, Island Chemical, operated the Site at the time of disposal of hazardous substances within the

meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

26. Pharmacia & Upjohn is the corporate successor-in-interest to Pierrel America, who operated the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendants are each liable to the United States, jointly and severally, for all costs incurred and to be incurred by the United States in connection with the Site, plus interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- (a) Enter judgment against the defendants, jointly and severally, in favor of the United States for response costs incurred in connection with the Site, together with interest;
- (b) Enjoin the Defendants, jointly and severally, to perform the work required to implement the ROD selected by EPA in the Record of Decision dated August 13, 2002;
- (c) Grant such other relief as the Court deems appropriate.

Respectfully submitted,

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